

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

TERRY DALE CARNES

§

VS.

§

CIVIL ACTION NO. 6:05cv19

UTMB, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Terry Dale Carnes, previously an inmate confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the lawsuit should be dismissed for failure to prosecute and failure to obey an order in that the Plaintiff failed to attend an evidentiary hearing. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit. The Plaintiff noted in his objections that he provided the Court with a change of address, and he thought the prison system would transport him to the hearing. The records in this case reveal that the Plaintiff provided the Court with a change of address on March 23, 2005. The notice of change of address did not mention that the Plaintiff was confined in the

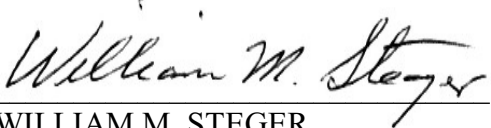
Panola County Detention Center. The order setting the case for the evidentiary hearing noted that the Plaintiff was no longer confined at the Eastham Unit and that he was in the free world. The Court received an acknowledgment showing that the Plaintiff received the order setting the case for a hearing on April 9, 2005. The hearing was conducted on May 26, 2005. The Plaintiff never notified the Court that he was in custody. He never notified the Court that there was a mistake when the order setting the case for a hearing specified that he was in the free world. He never notified the Court that he needed to be transported to the hearing. It is noted that the Defendants attended the evidentiary hearing, and the Plaintiff has not offered to pay the expenses they incurred by attending the hearing. The case should be dismissed for failure to prosecute and failure to obey an order. The Plaintiff's objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the complaint is **DISMISSED** without prejudice. Fed. R. Civ. P. 41(b).

It is further

**ORDERED** that all motions by either party not previously ruled on are hereby **DENIED**.

**SIGNED this 10th day of June, 2005.**

  
WILLIAM M. STEGER  
UNITED STATES DISTRICT JUDGE